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JAGDIS SINGH BANTA SINGH

v.

OUTLET RANK (M) SDN BHD

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COURT OF APPEAL, PUTRAJAYA
HISHAMUDIN MOHD YUNUS JCA
LINTON ALBERT JCA
MOHD ZAWAWI SALLEH JCA
[CIVIL APPEAL NO: A-02-3139-12-2011]

C

22 FEBRUARY 2013

CIVIL PROCEDURE: *Appeal - Notice of Appeal - Failure to date notice of appeal and sign memorandum of appeal - Whether fatal - Whether objection by opposing party misconceived - Whether defects mere*

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technicalities that were curable - Whether opposing party would suffer prejudice - Rules of the Court of Appeal 1994, rr. 5(3) & 18(3)

JURISDICTION: *Court of Appeal - Stay - Application for - Application to stay order for striking out winding-up petition - Whether*

E

dispute to be decided by civil court and not winding-up court - Whether assets of company in jeopardy - Whether stay allowed

The petitioner filed a winding up petition against the respondent for non-compliance of s. 218 notice. The provisional liquidator ('PL') appointed by the court reported that the respondent's

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directors had misappropriated the company's funds, breached their fiduciary duties and provided misleading statement of affairs. The PL subsequently filed an affidavit that the respondent ought to be wound up based on the public examination of the respondent's directors. On 8 December 2011, the court struck out the winding

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up petition on the ground that the petition was due to a family dispute and the matter ought to be resolved in the Civil Suit No: 22-48-2006 ('2006 Suit') filed by the petitioner. The petitioner filed an appeal on 18 December 2011 against the said decision and an application for stay of the court order of

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8 December 2011. An interim stay was granted by the court but it was subsequently dismissed and the PL was directed to file an application to discharge himself and the PL for the respondent ('the impugned order'). The petitioner therefore filed an application to stay the impugned order pending the disposal of the appeal and

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for the preservation of the *status quo* of the PL in encl. 8(a). The appellant also filed an application in encl. 31(a) to formalise the notice of appeal and the memorandum of appeal. The respondent

raised a preliminary objection that the appeal must be struck out for non-compliance with rr. 5(3) and 18(3) of the Rules of the Court of Appeal 1994 as the notice of appeal was not dated and the memorandum of appeal both in Bahasa Malaysia and English were not signed. The petitioner however submitted that the objection by the respondent was misconceived in law and facts as the check with the Registry of the Court of Appeal confirmed that the notice of appeal was endorsed with a date and the memorandum of appeal in both the languages were signed. Alternatively, the petitioner submitted that the defects, if any, were curable in law and the respondent would suffer no prejudice as it was aware of the nature of the merits of the appeal and had not previously taken any objection.

Held (allowing encl. 31(a) with no order as to costs and dismissing encl. 8(a) with costs)
Per Mohd Zawawi Salleh JCA delivering the judgment of the court:

(1) The notice of appeal had been dated by the Registrar of this court. The respondent would suffer no prejudice as it was aware of the true nature of the merits of the appeal. Further by O. 2(2) of the Rules of Court 2012, the respondent was precluded from taking any objections as the respondent had already taken fresh steps by filing a motion by way of encl. 27(a). (para 12)

(2) The requirement of rr. 5(3) and 18(3) of the Rules of the Court of Appeal 1994 should be liberally construed and that mere technicalities should not stand in the way of consideration of a case on the merits. Striking out a notice of appeal where a party inadvertently failed to date and sign it will produce a hash result. Rule of procedure should not be taken as a game of skill in which one oversight by counsel shall be decisive to the outcome of the case. The purpose of procedure was to facilitate a proper decision on the merits. Hence, the preliminary objection taken by the respondent must fail. (paras 14 & 15)

(3) Guided by the principles governing the application for stay, it was clear that the assets of the company were not in jeopardy. The dispute between the parties was *bona fide* and should be decided in the 2006 Suit. It was the duty of the civil court and not the duty of the winding up court to determine whether or not the debt was owed to the petitioner by the respondent. (paras 24 & 25)

A ***Bahasa Malaysia*** *Translation Of Headnotes*

Pempetisyen memfailkan satu petisyen penggulungan terhadap responden bagi ketidakpatuhan notis s. 218. Penyelesai sementara ('PS') yang dilantik oleh mahkamah melaporkan bahawa pengarah
B responden telah menyalahgunakan dana syarikat, melanggar kewajipan fidusiari dan memberikan penyata urusan yang mengelirukan. PS kemudian memfailkan afidavit bahawa responden wajar digulung berdasarkan kepada pemeriksaan awam pengarah responden. Pada 18 Disember 2011, mahkamah membatalkan
C petisyen penggulungan atas alasan bahawa petisyen tersebut adalah disebabkan oleh pertikaian keluarga dan perkara tersebut wajar diselesaikan di dalam Guaman No. 22-48-2006 ('Guaman 2006') yang difailkan oleh pempetisyen. Pempetisyen memfailkan rayuan pada 18 Disember 2011 terhadap keputusan tersebut dan
D satu permohonan penangguhan perintah mahkamah bertarikh 8 Disember 2011. Satu perintah penangguhan interim diberikan oleh mahkamah tetapi ia kemudian ditolak dan PS diarahkan memfailkan permohonan untuk melepaskan diri dan PS bagi responden ('perintah yang dipersoalkan tersebut'). Pempetisyen
E dengan itu telah memfailkan perintah untuk menangguhkan perintah yang dipersoalkan tersebut sementara pemutusan rayuan dan untuk pengekalan *status quo* PS di dalam lampiran. 8(a). Perayu juga memfailkan permohonan di dalam lampiran. 31(a) untuk memformalkan notis rayuan dan memorandum rayuan.
F Responden membangkitkan bantahan awalan bahawa rayuan tersebut mesti dibatalkan kerana ketidakpatuhan k. 5(3) dan k. 18(3) Kaedah-Kaedah Mahkamah Rayuan 1994 atas sebab notis rayuan tersebut tidak bertarikh dan kedua-dua memorandum rayuan di dalam Bahasa Malaysia dan Bahasa Inggeris tidak
G ditandatangani. Pempetisyen walau bagaimanapun menghujah bahawa bantahan oleh responden adalah salah tanggap dari segi undang-undang dan fakta kerana pemeriksaan dengan Pendaftaran Mahkamah Rayuan mengesahkan bahawa notis rayuan diendorskan dengan tarikh dan memorandum rayuan di dalam kedua-dua bahasa
H telah ditandatangani. Secara alternatif, pempetisyen menghujah bahawa kecacatan tersebut, jika ada, boleh dibetulkan dari segi undang-undang dan responden tidak akan mengalami prejudis kerana ia sedar akan sifat merit rayuan dan sebelum ini tidak membangkitkan apa-apa bantahan.

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Diputuskan (membenarkan lampiran 31(a) tanpa perintah untuk kos dan menolak lampiran 8(a) dengan kos)
Oleh Mohd Zawawi Salleh HMR menyampaikan penghakiman mahkamah:

(1) Pendaftar mahkamah ini telah meletakkan tarikh pada notis rayuan. Responden tidak akan mengalami prejudis kerana ia menyedari sifat sebenar merit rayuan. Selanjutnya, melalui A. 2(2) Kaedah-Kaedah Mahkamah 2012, responden dihalang daripada mengemukakan apa-apa bantahan kerana responden telahpun mengambil langkah baru dengan memfailkan usul di dalam lampiran 27(a).

(2) Keperluan kk. 5(3) dan 18(3) Kaedah-Kaedah Mahkamah Rayuan 1994 sewajarnya ditafsirkan secara liberal dan keteknikan semata-mata tidak wajar menghalang pertimbangan kes dari segi meritnya. Pembatalan notis rayuan di mana pihak, dengan tidak sengaja, gagal meletakkan tarikh dan tandatangan akan memberikan keputusan yang tidak tepat. Kaedah prosedur tidak boleh dianggap sebagai permainan kemahiran di mana kesilapan oleh peguam menjadi keputusan muktamad kes. Tujuan prosedur adalah untuk memudahkan keputusan yang wajar dari segi merit. Maka, bantahan awal yang dikemukakan oleh responden harus gagal.

(3) Berpandukan kepada prinsip yang mentadbir permohonan penangguhan, adalah jelas bahawa aset-aset syarikat tidak berada dalam keadaan bahaya. Pertikaian di antara pihak-pihak adalah *bona fide* dan perlu diselesaikan di dalam Guaman 2006. Adalah tugas mahkamah sivil dan bukan tugas mahkamah penggulungan untuk memutuskan sama ada hutang tertunggak kepada pempetisyen oleh responden.

Case(s) referred to:
Erinford Properties Ltd v. Cheshire County Council [1974] 2 WLR 749 ***(refd)***
Ho Kok Seng v. Boh Hing Sdn Bhd [2011] 10 CLJ 242 HC ***(refd)***
Jayasankaran v. PP [1983] 1 CLJ 171; [1983] CLJ (Rep) 182 FC ***(refd)***
Kosma Palm Oil Mill Sdn Bhd & Ors v. Koperasi Serbausaha Makmur Bhd [2003] 4 CLJ 1 FC ***(refd)***
Lai Kim Loi v. Datuk Lai Fook Kim & Co [1989] 2 CLJ 107; [1989] 1 CLJ (Rep) 61 SC ***(refd)***
Leong Poh Shee v. Ng Kat Chong [1965] 1 LNS 90 HC ***(refd)***
Low Cheng Soon v. TA Securities Sdn Bhd [2003] 1 CLJ 309 CA ***(refd)***
Re Kong Thai Sawmill (Miri) Sdn Bhd; Ling Beng Sung v. Kong Thai Sawmill (Miri) Sdn Bhd & Ors (No 2) [1974] 1 LNS 136 FC ***(refd)***
Serangoon Garden Estate Ltd v. Ang Keng [1953] 1 LNS 98 HC ***(refd)***
Tara Rajaratnam v. Datuk Jaginder Singh & Ors [1980] 1 LNS 195 FC ***(foll)***

Legislation referred to:
Companies Act 1965, ss. 218, 250
Rules of Court 2012, O. 1A, O. 2(2)
Rules of the Court of Appeal 1994, rr. 5(3), 18(3)

For the applicant - Harpal Singh Grewal (Harwinder Kaur, Imardeep Singh & Syazwan Basri with him); M/s Sandu & Assocs
For the respondent - Ekbal Singh Sandhu (Bhavanash Sharma with him); M/s Rabin & Assocs
For the provisional liquidator - Rabinder Singh

[Appeal from High Court, Ipoh; Companies (Winding-up) No: 28-65-2006]

Reported by S Barathi

JUDGMENT

Mohd Zawawi Salleh JCA:

[1] There were two notices of motions ("the motions") before the court. First, a motion to stay the order of the learned Judicial Commissioner ("JC") granted on 4 April 2012 ("the impugned order"). Second, a motion to formalise the notice of appeal filed on 18 December 2011 and the memorandum of appeal.

[2] To put the motions in their correct perspective, it is necessary to reproduce the nature of the order or relief sought. They were as follows:

Enclosure 8(a):

(i) for all further or other proceedings pursuant to the Order of the Learned Judicial Commissioner (JC) granted on 4.4.2012 be stayed pending the disposal of the applicant's appeal against the Order of the Court dated 8.12.2011 dismissing the Applicant's winding up petition (enclosure 1) filed against the Respondent;

(ii) that the appointment of the Provisional Liquidator (PL) by the Court on 18.10.2006 be maintained pending the hearing and disposal of the Applicant's appeal dated 18.12.2011;

(iii) that the *status quo* of the PL be maintained to manage and conduct the affairs of the Respondent pending the disposal of the Appeal or on such other terms this Honourable Court think just and proper;

(iv) pending the disposal of the Appeal, the Respondent be restrained from ratifying and/or writing off the funds issue and other issues of misdemeanors raised in the PL's 5 reports of 17.5.2007, 29.10.2007, 31.7.2007, 4.7.2011 and 21.3.2012.

Enclosure 31(a):

(1) That the Appellant and/or his Solicitors be at liberty to date the Notice of Appeal notwithstanding that the said Notice of Appeal has been dated by the Registrar of this Honourable Court;

(2) That the Appellant and/or his Solicitors be at liberty to formalise the Memorandum of Appeal by signing all copies filed in Court and served on the Respondent's Solicitors; and

(3) That there be no order as to costs.

[3] We heard the motions on 4 September 2012 wherein at their conclusions we unanimously dismissed encl. 8(a) with costs and allowed encl. 31(a) with no order as to costs. We now give our reason for so deciding.

Factual Background And Antecedent

[4] Compendiously and concisely, the relevant facts necessary and germane to the disposals of the motions may be stated as follows:

(a) Outlet Rank (M) Sdn Bhd ("the respondent") was incorporated on 26 June 1993. The directors and shareholders of the respondent were the petitioner's brother, sister-in-law- and nephew.

(b) The petitioner filed a winding up petition against the respondent on 11 August 2006 for non-compliance of s. 218 notice issued on 10 February 2006. The petitioner alleged that the respondent owed him a sum of RM320,000.

(c) On 18 October 2006, the court appointed the PL. The petitioner alleged that the PL in his five (5) reports stated that the respondent's directors had misappropriated the company's funds, breached their fiduciary duties and provided misleading statement of affairs.

(d) The PL filed a police report on 31 July 2007 complaining that a sum of RM7,133,886 was received by the respondent's directors but there was no information as to the destination of the said funds and that the statement of affairs provided by the directors was misleading.

(e) On 5 May 2008, the PL made an application under s. 250 of the Companies Act 1965 for public examination of the respondent's directors, and the court allowed the PL's application on 17 June 2008 and the public examination was concluded on 1 December 2010 and 10 February 2010.

(f) Based on the public examination, the PL filed an affidavit that the respondent ought to be wound up.

(g) On 8 December 2011, the court did not dismiss but merely struck out the winding up petition on the ground that the petition was due to a family dispute and the matter to be resolved in legal proceedings filed on 9 March 2006 *vide* Suit No: 22-48-2006.

(h) On 18 December 2011, the petitioner filed an appeal against the aforesaid decision and on 29 December 2012 the petitioner filed an application for stay of the court order of 8 December 2011 (encl. 252).

(i) On 22 February 2012, the court granted an interim stay and encl. 252 was fixed for *inter partes* hearing on 4 April 2012.

(j) On 4 April 2012, the court dismissed encl. 252 and directed the PL to file an application to discharge himself and PL for the respondent.

(k) The petitioner filed encl. 8(a) in the Court of Appeal for the PL appointed by the court on 18 October 2006 be maintained pending the hearing and disposal of the appellant's appeal dated 18 December 2011.

Respective Submissions Of The Parties

[5] During the course of the hearing of the motions, Dato' Harpal Singh Grewal, learned counsel for the petitioner informed the court that he would proceed with encl. 31(a) first because in order for this court to consider the application for stay of the impugned order (encl. 8(a)), there should be a pending

appeal and a valid one for that matter. If the petitioner's pending appeal was either defective or invalid, this court would not entertain the application.

[6] We agreed with the learned counsel's submission and we proceeded to hear encl. 31(a) first.

Enclosure 31(a)

[7] Learned counsel for the petitioner submitted that encl. 31(a) had been filed in an abundance of caution as the respondent's solicitor's notice of preliminary objections seemed to suggest that the court's copies of the record of appeal were defective. The notice of appeal was not dated and memorandum of appeal both in Bahasa Malaysia and English versions were not signed.

[8] Learned counsel further submitted that the preliminary objection was misconceived in law and facts and was irregular based on the following reasons:

(a) upon receipt of notice of preliminary objections, his solicitors office checked with the Registry of the Court of Appeal and was informed that the notice of appeal filed was endorsed with a date by the Registrar of the High Court of Ipoh and the memorandum of appeal both in Bahasa Malaysia and English version were signed.

(b) he also checked with solicitors for the Provisional Liquidations and they confirmed that their copies of the memorandum of appeal both in Bahasa Malaysia and English version were signed.

(c) alternatively, the defects, if any, were curable in law and the respondent would suffer no prejudice as it was aware of the true nature of the merits of the appeal and had not previously taken any objection which are now taken.

[9] In support of his submissions, learned counsel drew the court's attention to O. 1A and O. 2 of the Rules of Court 2012 which provide that such an irregular shall not nullify the proceedings or any documents therein.

[10] Encik Ekbal Singh Sandhu, learned counsel for the respondent submitted that the appeal must be struck out for non-compliance with r. 5(3) and r. 18(3) of the Rules of the Court of Appeal 1994.

[11] In support of his submissions learned counsel placed reliance upon the following cases:

(i) *Low Cheng Soon v. TA Securities Sdn Bhd* [2003] 1 CLJ 309;

(ii) *Ho Kok Seng v. Boh Hing Sdn Bhd* [2011] 10 CLJ 242; and

(iii) *Jayasankaran v. PP* [1983] 1 CLJ 171; [1983] CLJ (Rep) 182.

[12] With respect, we were unable to agree with the submissions advanced by learned counsel for the respondent. The facts revealed that the notice of appeal had been dated by the Registrar of this court. We were of the considered opinion that the respondent would suffer no prejudice as it was aware of the true nature of the merits of the appeal and had not previously taken any objections which are now taken. Further, by O. 2(2) of the Rules Of Court 2012, the respondent was precluded from taking any objections as the respondent had already taken fresh step by filing a motion by way of encl. 27(a).

[13] Our conclusion was fortified by the decision of the Federal Court in *Tara Rajaratnam v. Datuk Jaginder Singh & Ors* [1980] 1 LNS 195; [1981] 1 MLJ 97. Ibrahim Manan FJ, in delivering the judgment of the court, had this to say at p. 98:

> In respect of the memorandum of appeal it is the contention of Dato Suppiah that as it was not signed and dated as required under Form 3 it is a nullity and therefore there is no appeal before this court to hear it. In his affidavit Mr. S.P. Naiker stated that the omission to sign and date the memorandum was due to an oversight and the anxiety to file the record of appeal in time. It was prepared by him and after typing he read through the same and at page 4, paragraph 9 he deleted a word and initialed by the side. Then immediately he attended to the other copies in the same manner and initialed them. Having initialed all the copies in his anxiety to have them bound he forgot to sign at the foot of page 7 as required. Several authorities have been cited by Dato Suppiah but most of them deal with unsigned pleadings. None of them deals with unsigned memorandum of appeal and the case nearest to it is *R v. Justices of Kent* which relates to a notice of appeal which was not unsigned, but signed by the clerk of the

appellant's attorney by his authority. It is to be noted, however, that while the signature in the notice of appeal in that case is required by statute (12 & 13 Vict. C. 45 s.1) the signature in the memorandum of appeal is required in our case by rule 19(3) which provides that "The Memorandum of Appeal shall be substantially in Form 3," and that even if there is an English equivalent to our rule 95(1) the requirement of the statute would prevail. Mr. S.P. Naiker has given what we consider to be a genuine explanation as to why the memorandum of appeal had not been signed and as it had been filed together with all the documents as required under rule 19(4)(a) to (f) and as the appellant's solicitor had initialed on one of its pages, we are satisfied that it is not a mere fiction and that the grounds stated therein are *bona fide*. We therefore agree with Mr. Cumuraswamy that the failure to sign and date the memorandum of appeal in this case is curable under the said rule 95(1).

[14] We were of the considered opinion that in the circumstances of this instant case, the requirement of rr. 5(3) and 18(3) of Rules of the Court of Appeal 1994 should be liberally construed and that mere technicalities should not stand in the way of consideration of a case on the merits. Striking out a notice of appeal where a party inadvertently failed to date and sign it will produce a hash result. Rule of procedure should not be taken as a game of skill in which one oversight by counsel shall be decisive to the outcome of the case. The purpose of procedure is to facilitate a proper decision on the merits.

[15] Therefore, the preliminary objection taken by the respondent must fail. We directed learned counsel for the petitioner to date and sign the notice of appeal and memorandum of appeal before the court.

Enclosure 8(a)

[16] Learned counsel for the petitioner submitted that the learned JC in dismissing the winding up petition on 8 December 2011 had seriously misdirected himself by failing to take cognisance of the PL's five reports highlighting the respondent's and its directors' misdemeanors.

[17] Learned counsel for the petitioner further submitted that the PL's five reports justified the application in encl. 8(a) and it would be unsafe to hand over the affairs of the respondent to the directors who by their conduct had demonstrated that they would not act in the best interest of the company.

[18] The nub of learned counsel for the petitioner's complaint was that the learned JC's had failed to consider and/or ignored the law on stay of execution/proceedings pending appeal.

[19] Learned counsel for the respondent stoutly defended the impugned order. Learned counsel submitted that the petitioner had failed to demonstrate a *prima facie* case that the respondent would dissipate its assets.

[20] Learned counsel for the respondent further submitted that on 10 March 2006, the petitioner had filed a Civil Suit No: 22-48-2006 in the High Court of Malaya at Ipoh. In this civil suit, the petitioner was the plaintiff and the respondent and its directors were the defendants. The petitioner's allegation that the respondent owed him a sum of RM320,000 as contained in the affidavit in support of encl. 8(a) was also claimed in the said suit.

[21] Learned counsel for the respondent emphasised that the learned JC had come to a right conclusion when His Lordship struck out encl. (1) and decided that the dispute between the parties was *bona fide* and such dispute should be determined in the Civil Suit No: 22-48-2006. The alleged debt was seriously disputed by the respondent and the winding-up court was not an appropriate forum for the petitioner to establish his claim.

Principles Of Stay Proceedings

[22] Now, what factors or principles will, and should, guide the courts in applications for a stay of an order granted by a court. These factors or principles have been reiterated in very many of cases decided by our courts. The factors or principles so enumerated are inexhaustive, and not all of them are applicable to every case. Each has its own peculiar principle. Some of the principles to be considered in the motions may be stated as follows:

(a) The courts have an unimpeded discretion to grant or refuse stay. In this, like in all other instances of discretion, the court is bound to exercise that discretion both judicially as well as judiciously and not erratically. (See *Serangoon Garden Estate Ltd v. Ang Keng* [1953] 1 LNS 98; [1953] 19 MLJ 116; *Leong Poh Shee v. Ng Kat Chong* [1965] 1 LNS 90; [1966] 1 MLJ 86)

(b) An unsuccessful party applying for a stay must show "special circumstances". What will constitute "special circumstances" will no doubt vary from case to case. The fact that an appeal would be rendered nugatory if stay was refused is the most common one. (See *Kosma Palm Oil Mill Sdn Bhd & Ors v. Koperasi Serbausaha Makmur Bhd* [2003] 4 CLJ 1 and *Re Kong Thai Sawmill (Miri) Sdn Bhd; Ling Beng Sung v. Kong Thai Sawmill (Miri) Sdn Bhd & Ors (No 2)* [1974] 1 LNS 136; [1976] 1 MLJ 131). The application is not granted as a matter of routine and it is not an automatic or mechanical relief slavishly followed after filing an appeal. In every matter or suit before a court of law, whether in its original or appellate stage of proceedings, the court will consider the competing rights of both parties including the applicant and respondent to justice.

(c) There is a need to preserve the *res* or preservation of the subject matter of litigation. The courts have an obligation to protect the *res* for the purpose of ensuring that the appeal, if successful, will not be rendered nugatory. (See *Erinford Properties Ltd v. Cheshire County Council* [1974] 2 WLR 749). But where it is shown by affidavit evidence, say by the respondent, that the *res* will not be destroyed or there is in fact no *res*, an application may not be granted.

(d) Where an application is an abuse of the court process, then the stay of proceedings will not be granted. A typical example of abuse of court process is where a suit is duplicated or where a party employs improper and perverse procedure to obtain an advantage undeservedly.

(e) It is important to stress that initiation of a suit in a court of law demands the suit will be heard expeditiously and completed without any inhibition midway. Therefore, where an application for stay of proceedings is intended to merely stop or suspend the proceedings; it will be refused. Some applicants, on seeing the weakness of their client's case, would resort to application for stay and thereby waste the time of the other party and the court. The party simply cannot resort to the interlocutory of stay proceedings on having the slightest disagreement with any ruling of a trial judge. Courts are enjoined not to encourage such unwholesome practice.

(f) An applicant for stay of proceedings must come with clean hands because what he is asking is an equitable relief. Equity will not assist the unclean. That is why the court has to look into the antecedents of the parties.

[23] This court's focus at this stage must remain on deciding whether or not parties have disclosed favourable conditions for or against the grant of the relief sought which is for stay of the impugned order, pending the determination of the petitioner's appeal. Of course, we have to look into the grounds of judgment of the JC. But this however, should not extend to deciding the pending appeal, as it will be premature at this stage to do so. It is not for the court deciding the application for stay to declare that the grounds of appeal are frivolous or not arguable. This is to avoid a situation where the court be accused of descending into the arena even before the appeal is argued.

[24] Now, applying the above principles to the motion in encl. 8(a) before us, we agreed with the submissions of the learned counsel for the respondent that the assets of the company were not in jeopardy. In the Civil Suit No: 22-48-2006, the petitioner had already obtained an *ad interim* injunction, *inter alia*, reads as follows:

> ... dihalang menjual atau melepaskan unit-unit rumah yang belum dijual ... dihalang membayar sebarang wang yang diterima daripada hasil jualan unit-unit yang telah dibangunkan atas hartanah tersebut.

[25] We agreed with the findings of learned JC that the dispute between the parties was *bona fide* and that such dispute should be decided in the Civil Suit No: 22-48-2006. We also agreed that it was not the duty of the winding-up court to determine whether or not the debt was owed to the petitioner by the respondent and this dispute should be decided in the civil court.

[26] In the case of *Lai Kim Loi v. Datuk Lai Fook Kim & Co* [1989] 2 CLJ 107; [1989] 1 CLJ (Rep) 61; [1989] 2 MLJ 290 (SC), the court held that although the issues raised and the relief sought were not totally similar, yet the substantial duplication of issues and relief sought in the writ of summons and in the petition, amounted to multiplicity of actions and in all circumstances of the case, the petition presented was vexatious and was an abuse of the process of the court and ought to be struck out as the learned judge had done.

[27] Having considered the whole circumstances of the case and the submissions of counsel and the applicable law, and taking particular note that the dispute between the parties was *bona fide* and such dispute should be decided in the Civil Suit No: 22-48-2006, we were not inclined to allow the motion in encl. 8(a).

[28] For the reasons stated above, we unanimously dismissed encl. 8(a) with costs fixed at RM10,000. We directed that the impugned order be amended by substituting the word "membatalkan", the word "menolak" to reflect the true effect of the impugned order.